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PRO SE APPELLANT:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMES R. CAMPBELL,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 18A05-0611-CR-666

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APPEAL FROM THE DELAWARE SUPERIOR COURT  
The Honorable Robert L. Barnet, Judge  
Cause No. 18D01-8512-CF-51

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**July 19, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

James Campbell (“Campbell”) brings this belated appeal of his 120-year sentence for two counts of murder. Campbell committed the murders in 1985 and was sentenced in 1986. On appeal, Campbell argues that all of the aggravating circumstances relied upon by the trial court are invalid under *Blakely v. Washington*, 542 U.S. 296 (2004), because they were neither admitted by Campbell nor found by a jury beyond a reasonable doubt. He also challenges several of the aggravating circumstances on non-*Blakely* grounds and contends that the trial court failed to find certain proper mitigating circumstances. We reject Campbell’s *Blakely* claims in light of the Indiana Supreme Court’s recent holding, in *Gutermuth v. State*, 868 N.E.2d 427 (Ind. 2007), that belated appeals of sentences entered before *Blakely* are not subject to the holding in that case. As to Campbell’s non-*Blakely* claims, though we find that the trial court abused its discretion in certain respects, we can say with confidence that the trial court would have imposed the same sentence if it had considered the proper aggravating and mitigating circumstances. We therefore affirm the judgment of the trial court.

## **Facts and Procedural History**

On December 5, 1985, Campbell, who was twenty years old at the time, shot and killed his sixteen-year-old girlfriend, Wendi Matson (“Matson”), and her mother, Carol Revis. The State charged Campbell with two counts of murder.<sup>1</sup> Campbell pled guilty. In sentencing Campbell, the trial court identified seven aggravating circumstances: (1) the victims, both women, were unarmed and posed no threat to Campbell at any time; (2)

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<sup>1</sup> Ind. Code § 35-42-1-1.

one of the victims, Matson, was sixteen years old; (3) many of the facts indicate that Campbell reflected upon his action as opposed to an act done in the heat of passion; (4) Campbell's lack of remorse and unwillingness to accept full responsibility for his actions indicates that the risk he might commit another similar crime is quite great; (5) Campbell is in need of correctional treatment that can best be provided by a penal institution; (6) imposition of a reduced sentence would depreciate the seriousness of the crime; and (7) Campbell has demonstrated total disregard for human life and suffering. *See Appellant's App. p. 3.* The trial court did not specifically identify any mitigating circumstances, but it stated, "These aggravating factors outweigh *any possible mitigating factors* and the Court Finds that these factors demand the imposition of maximum consecutive terms of imprisonment." *Id.* (emphasis added). The trial court imposed the maximum sentence of sixty years<sup>2</sup> for each conviction and ordered them to run consecutively, for a total executed sentence of 120 years.

On August 3, 2006, Campbell filed a Verified Petition for Leave to File a Belated Appeal. The trial court granted his petition. This appeal ensued.

### **Discussion and Decision**

On appeal, Campbell argues that all of the aggravating circumstances relied upon by the trial court are invalid under *Blakely* because they were neither admitted by Campbell nor found by a jury beyond a reasonable doubt. He also challenges several of

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<sup>2</sup> At the time of Campbell's offenses, the murder sentencing statute provided for a minimum sentence of thirty years, a presumptive sentence of forty years, and a maximum sentence of sixty years. *See Ind. Code § 35-50-2-3* (1985).

the aggravating circumstances on non-*Blakely* grounds and contends that the trial court failed to find certain proper mitigating circumstances.<sup>3</sup>

### **I. *Blakely***

Campbell's main contention on appeal is that the trial court's finding of aggravating circumstances violated his rights under *Blakely*, in which the United States Supreme Court stated, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 542 U.S. at 301 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)). Campbell contends that his sentence violates *Blakely* because the facts underlying the aggravators identified by the trial court were neither admitted by Campbell nor found by a jury beyond a reasonable doubt. In light of recent developments, we conclude that Campbell is not entitled to have his sentence reviewed under *Blakely*.

Campbell's claims come to us by way of a belated appeal. Campbell was sentenced in May 1986, more than eighteen years before *Blakely* was decided, and he received permission to file this belated appeal in August 2006. Unfortunately for Campbell, on June 20, 2007, more than two months after briefing in this case was

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<sup>3</sup> Campbell also suggests that his sentence is "inappropriate in light of the nature of the offense and the character of the offender" under Indiana Appellate Rule 7(B). We make two observations. First, at the time of Campbell's offenses, current Indiana Appellate Rule 7(B) did not exist. Rather, appellate review of sentences was governed by the Indiana Rules for the Appellate Review of Sentences, which focused on whether a sentence was "*manifestly unreasonable* in light of the nature of the offense and the character of the offender." (Emphasis added). Second, Campbell has made no argument regarding the nature of his offenses or his character. Therefore, he has waived any challenge under either Indiana Appellate Rule 7(B) or the former Rules for the Appellate Review of Sentences. See Ind. Appellate Rule 46(a)(8)(A). Nonetheless, we do not find Campbell's sentence to be manifestly unreasonable in light of the nature of his offenses and his character.

complete, the Indiana Supreme Court rejected Campbell's position in *Gutermuth*, where it stated:

We hold that this belated appeal of a sentence entered before a new constitutional rule of criminal procedure was announced is not governed by the new rule. Specifically, belated appeals of sentences entered before *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) are not subject to the holding in that case.

868 N.E.2d at 428. In accordance with our Supreme Court's holding, we need not address Campbell's *Blakely* claims.

## **II. Aggravators and Mitigators**

Campbell also challenges several of the aggravating circumstances relied upon by the trial court on non-*Blakely* grounds and contends that the trial court should have found certain mitigating circumstances. Initially, we note that sentencing decisions are generally within the discretion of the trial court and will only be reversed upon a showing of an abuse of discretion. *Marshall v. State*, 832 N.E.2d 615, 623 (Ind. Ct. App. 2005), *trans. denied*.

### **A. Aggravating Circumstances**

Campbell first contends that the trial court abused its discretion by finding as an aggravating circumstance the fact that one of Campbell's victims, Matson, was only sixteen years old. Campbell directs us to Indiana Code § 35-38-1-7.1, which allows the trial court to find as an aggravating circumstance the fact that the victim was less than twelve years of age at the time the person committed the offense. Campbell maintains, "[T]he fact that the victim in question was sixteen (16) years of age does not qualify as an aggravating factor under the above-stated statute." Appellant's Br. p. 9. In other words,

Campbell argues that Matson's age should not have been an aggravator because she was not less than twelve years old. We make two observations.

First, Indiana Code § 35-38-1-7.1 was not in effect at the time of Campbell's offenses. The sentencing statute in effect in 1985 was Indiana Code § 35-38-1-7, which was repealed in 1990 and *replaced by* Indiana Code § 35-38-1-7.1. *See* P.L. 1-1990, § 344 (repealing Ind. Code § 35-38-1-7); P.L. 1-1990, § 345 (enacting Ind. Code § 35-38-1-7.1). Second, the sentencing statute in effect at the time of Campbell's offenses, Indiana Code § 35-38-1-7, did not include the "victim of the crime was less than twelve (12) years of age" aggravator. *See* I.C. § 35-38-1-7 (1985). This aggravator was added to Indiana Code § 35-38-1-7 in 1987. *See Sauerheber v. State*, 698 N.E.2d 796, 805 n.8 (Ind. 1998) (citing P.L. 320-1987, § 1). These details are of little moment, however, as both statutes contain a provision stating that the specifically delineated aggravating circumstances "do not limit the matters that the court may consider in determining the sentence." I.C. § 35-38-1-7(d) (1985); I.C. § 35-38-1-7.1(c) (2007). As such, although Matson's age is not a statutory aggravating factor, it was nonetheless proper to consider as an aggravating factor. *See Sauerheber*, 698 N.E.2d at 805.

Campbell next argues that the trial court abused its discretion in finding as an aggravating circumstance the fact that Campbell "reflected upon his action as opposed to an act done in the heat of passion." Appellant's App. p. 3. Campbell argues that the evidence before the trial court did not support this aggravator. We disagree. The State, in establishing a factual basis for Campbell's guilty plea, elicited the following testimony from Muncie Police Officer Jan McClellan ("Officer McClellan"):

Basically he told me that he had been for several months going to the Revis home, which he was not allowed to be there, by Mrs. Revis. That he had been seeing Wendi Matson for a period of time. Uh, he stated on that particular day he had gone over. Had heard a noise. Had left. Because he thought it was Mrs. Revis returning. Found out later it was not. He came back. Then the second time around the noise that was heard was Mrs. Revis and she had caught him at the property. She did in fact call him a son of a b\*\*\*\* said he wasn't worth having a daughter over. He then left the house. He stated that he had watched t.v. for a short period of time, then just walked in and got his shotgun from his father's room. And then he went to his brother's room and got some shells, then proceeded to the Revis house, at which time he walked, kicked in the front door, entered. And she was on the telephone at the time to a friend. And I believe a statement was made by Mrs. Revis that you haven't got the guts, at which time he did shoot Mrs. Revis. He then, Wendi Matson was apparently screaming and hollering and was striking him. He then broke down the shotgun, reloaded it. And fired at Wendi Matson striking her. He then proceeded back to his house. Put the shotgun back. He stated that he had forgot a shell at the property. Returned at which time to retrieve the shell. Wendi Matson was still alive at that time, and yelling for help. He got his shell and then returned to the house.

*Id.* at 49-50. Officer McClellan's statement is sufficient to support the trial court's finding that Campbell committed the murders despite having had time to reflect upon his actions. The trial court did not abuse its discretion in finding this aggravator.

Campbell also asserts that the trial court abused its discretion by finding as an aggravating circumstance the fact that Campbell "is in need of correctional treatment that can best be provided by a penal institution." *Id.* at 3. As to this aggravator, Campbell notes that "[w]hen a court identifies a defendant's need for correctional and rehabilitative treatment at a penal facility as an aggravating factor, it must explain why the defendant requires treatment *beyond the presumptive sentence.*" Appellant's Br. p. 13 (citing *Bailey v. State*, 763 N.E.2d 998, 1004 (Ind. 2002)) (emphasis added). Campbell argues that the

trial court failed to “explain why a sentence in excess of the presumptive sentence is necessary[.]” *Id.* He is correct. In identifying this aggravator, the trial court stated:

[A]s to the risk that [Campbell] would commit another crime and considering whether or not [Campbell] is in need of correctional and rehabilitative treatment, the Court notes that at the time of the guilty plea and to the probation officer and in fact today, he really didn’t remember the events of that day. And that’s with the background that he’s already made a prior statement to the police in detail. *[Campbell] has not, in my judgment, fully accepted responsibility for these acts and has shown no remorse. The opinion of the Court, under the circumstances, should he be placed in the same situation as to an argument, as to the common affairs of life that we’re all, that we have to deal with, attention. I think the probabilities are high that [Campbell] would commit another crime.* The Court does find [Campbell] is in need of correctional and rehabilitative treatment.

Appellant’s App. p. 83-84 (emphasis added). There are two problems with this explanation. First, the trial court never states why Campbell is in need of correctional treatment *in excess of the presumptive term*. Second, the trial court sought to justify this aggravator by reference to Campbell’s failure to accept responsibility, his lack of remorse, and the probability that he would commit another crime. But the trial court also found these facts to constitute a separate aggravator: “[Campbell’s lack of remorse and unwillingness to accept full responsibility for his actions indicates that the risk he might commit another similar crime is quite great.” *Id.* at 3. The trial court abused its discretion in relying upon Campbell’s need for correctional treatment best provided by a penal institution as an aggravator.

Finally, Campbell contends that the trial court abused its discretion in finding as an aggravating circumstance the fact that “imposition of a reduced sentence would depreciate the seriousness of the crime,” *id.* at 3, because “there is nothing in the record

indicating that the trial court was considering the imposition of a reduced sentence,” Appellant’s Br. p. 14. The State concedes that the trial court abused its discretion with regard to this aggravator. *See Hawkins v. State*, 748 N.E.2d 362, 363 (Ind. 2002) (“We acknowledge that the ‘depreciate the seriousness’ aggravator is appropriate only where the trial court is considering a reduced sentence.”), *reh’g denied*.

To summarize, five of the seven aggravating circumstances relied upon by the trial court in this case were proper: (1) the victims, both women, were unarmed and posed no threat to Campbell at any time; (2) one of the victims, Matson, was sixteen years old; (3) Campbell reflected upon his action as opposed to an act done in the heat of passion; (4) Campbell’s lack of remorse and unwillingness to accept full responsibility for his actions indicates that the risk he might commit another similar crime is quite great; and (7) Campbell has demonstrated total disregard for human life and suffering.

In addition to his *Blakely* and non-*Blakely* challenges to the aggravating circumstances, Campbell also argues that the trial court abused its discretion by failing to find as mitigating circumstances his guilty plea and lack of criminal history. He may well be correct. *See Francis v. State*, 817 N.E.2d 235, 238 (Ind. 2004) (stating that “a defendant who pleads guilty deserves to have mitigating weight extended to the guilty plea in return.”); *Merlington v. State*, 814 N.E.2d 269, 273 (Ind. 2004) (noting that lack of criminal history is a “weighty” mitigating circumstance). But we need not give any further consideration to these arguments. Even if a trial court finds improper aggravators or fails to find proper mitigators, we will affirm the sentence when we can say with confidence that the trial court would have imposed the same sentence if it had considered

the proper aggravating and mitigating circumstances. *See Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002); *Comer v. State*, 839 N.E.2d 721, 725 (Ind. Ct. App. 2005), *trans. denied*. Here, the trial court emphatically stated that the aggravating factors “outweigh *any possible mitigating factors* and the Court Finds that these factors demand the imposition of maximum consecutive terms of imprisonment.” Appellant’s App. p. 3 (emphasis added). In light of this statement and the sheer brutality of Campbell’s crimes, we can say with confidence that even if the trial court had not considered the improper aggravators—imposition of a reduced sentence would depreciate the seriousness of the crime and need for correctional treatment best provided by a penal institution—and had considered Campbell’s guilty plea and lack of criminal history as mitigating circumstances, it still would have imposed maximum, consecutive sentences. Therefore, we affirm the 120-year sentence imposed by the trial court.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.